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BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Applications of Tribune Media Company and Sinclair Broadcasting Group, Inc. for Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 17-179

Dear Ms. Dortch:

Earlier this week, Sinclair submitted its most recent amendment to its proposed merger with Tribune, along with two dozen or so divestiture applications. Yet Sinclair withheld more than 250 agreements, schedules, exhibits, and related documents, including materials that appear to contemplate ongoing relationships between Sinclair and the parties to whom it will putatively divest stations. Sinclair appears to have unilaterally determined that these materials are not germane. The Commission cannot allow Sinclair to hide the ball in this manner—not in a merger of this magnitude, not with a party that the Commission recently found to have abused its relationships with other broadcasters, and not where, as here, the genuineness of divestitures is so important.

The Sinclair-Tribune transaction has already proven unique in several respects. It proposes to make Sinclair the largest broadcaster in history. It represents the very first request for a top-four duopoly under the Commission's new relaxed local media ownership rules.[1] Unfortunately, however—and despite the Commission's best efforts[2]—it can also be

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[1] *2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules & Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, et al.*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd. 9802 (2017) ("*Local Ownership Reconsideration*").

[2] *See, e.g.*, Letter from Michelle M. Carey to Miles S. Mason and Mace J. Rosenstein, MB Docket No. 17-179 (May 21, 2018) (requesting information related to retransmission consent revenues).

characterized as reflecting a lack of transparency on the part of Sinclair that rivals anything in recent memory.

On this score, it has taken Sinclair nearly a year—and no fewer than *four* major amendments[3]—to reveal which stations it proposes to divest, the parties who seek to acquire them, and the terms on which it proposes to do so. Indeed, Sinclair has still not provided this basic information with respect to the duopoly that it hopes to create in St. Louis. Rather, Sinclair promises to provide this information at a later date.[4]

Unfortunately, Sinclair's latest submissions continue to hide the ball in other respects as well. Sinclair now proposes to divest stations to parties such as Fox Television Stations, Cunningham Broadcasting, and Standard Media. As is typical in transactions of such size, the overall transaction is reflected in numerous documents, not just a single asset purchase agreement. Here, however, at least some of those documents appear to contemplate an ongoing commercial relationship between Sinclair and the divested station's new owner or to give Sinclair rights to purchase certain stations in the future. This raises obvious questions where divestitures are required to comply with ownership rules and the antitrust laws.

Sinclair has apparently determined *not* to supply many of these materials because it believes that they either "contain proprietary information" (notwithstanding procedures in place for protecting such information from disclosure[5]) or "are not germane to the Commission's

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[3] *See Applications of Tribune Media Co. and Sinclair Broadcast Group, Inc. for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, May 14, 2018 Amendment to Comprehensive Exhibit (filed May 14, 2018) ("May Amendment"); *Applications of Tribune Media Co. and Sinclair Broadcast Group, Inc. for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, Amendment to June Comprehensive Exhibit (filed April 24, 2018) ("April Amendment"); *Applications of Tribune Media Co. and Sinclair Broadcasting Group, Inc. for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, Amendment to June Comprehensive Exhibit (filed March 8, 2018); *Applications of Tribune Media Co. and Sinclair Broadcast Group, Inc. for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, Amendment to June Comprehensive Exhibit (filed Feb. 20, 2018); Public Notice, DA 18-530, MB Docket No. 17-179 (rel. May 21, 2018).

[4] *See* May Amendment at 1 ("Applicants have filed applications to assign or transfer control of KPLR-TV and KDNL-TV in St. Louis to a divestiture trust pending approval by the Department of Justice, Antitrust Division ("DOJ"), of a proposed buyer for KPLR-TV or, if no buyer is approved for KPLR-TV, approval of a proposed buyer for KDNL-TV. . .").

[5] *See Tribune Media Co. & Sinclair Broad. Grp., Inc.*, 32 FCC Rcd. 5612 (MB 2017) (issuing protective order).

consideration of this application."[6] Here, from a typical divestiture application,[7] is a list of the documents Sinclair has chosen *not* to supply:

- The disclosure schedules to the asset purchase agreement.
- The exhibits and disclosure schedules to an option agreement Sinclair has to purchase two Fox stations (excepting a "form of channel sharing agreement" for one of the stations).
- The form of bill of sale attached to assert purchase agreement.
- The form of assignment and assumption of FCC licenses attached to the asset purchase agreement.
- The form of assignment of purchased intellectual property attached to the asset purchase agreement.
- The form of assignment and assumption agreement attached to the asset purchase agreement.
- The form of assignment and assumption of real property leases attached to the asset purchase agreement.
- The form of news share agreement attached to the asset purchase agreement.
- The form of shared programming license agreement attached to the asset purchase agreement.
- The form of site license agreement attached to the asset purchase agreement.
- An exhibit to the asset purchase agreement regarding "WSFL-TV Matters"
- "Transition services" schedule to the form of transition services agreement.
- "Service fees" schedule attached to the form of transition services agreement.
- "Reverse transition services" schedule attached to the form of transition services agreement.
- "Service fees" schedule attached to the form of transition services agreement.
- "Use of transitional space" schedule attached to the form of transition services agreement.[8]

No one knows what arrangements have been reached in any of these documents, and Sinclair has unilaterally decided the Commission need not review them. The titles of some of these missing agreements suggest ongoing relationships with putative divestiture counterparties. Other documents with more innocuous titles may also contain language creating such ongoing relationships.

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6 *Application for Consent to Assignment of Broad. Station Construction Permit or License*, File No. BALCDT-20180514AAU (filed May 14, 2018) ("KCPQ Transfer") (transfer of KCPQ from Tribune to Fox).

7 By our count, applicants have withheld 274 separate agreements, schedules, exhibits, and related documents in total from their 21 divestiture applications.

8 KCPQ Transfer at Exhibit 5.

Of course, television stations can lawfully maintain a wide variety of ongoing relationships with one another. In the normal course of business, many such arrangements would raise no eyebrows. This proceeding, however, involves anything but the normal course of business. It concerns an industry-changing merger in which the Commission has acknowledged a particular need for transparency[9]—and gone to extraordinary lengths to defend itself from charges of partiality.[10] Indeed, in a much smaller merger raising similar competitive issues of similar scope but far fewer consequences, the Department of Justice *prohibited* the parties from establishing ongoing relationships.[11] At a minimum, the Commission cannot permit such relations here without examining them.

While we cannot know what the missing exhibits and agreements contain without reviewing them, the agreements concerning "transition services" and "reverse transition services" raise particular concerns.[12] This is because the scope of those agreements—that is, the portion of the contracts that describes what services are to be rendered—is set forth in schedules that Sinclair decided to withhold. If the services provided would in some way permit Sinclair to engage in joint retransmission consent negotiations with such parties—or even for the parties to exchange data or information related to retransmission consent—they would increase the already considerable harm the transaction will cause.

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[9] Letter from Michelle M. Carey to Miles S. Mason and Mace J. Rosenstein, DA 18-38, MB Docket No. 17-179 (rel. Jan. 11, 2018) (noting that "[t]he Commission has a strong interest in ensuring a full and complete record upon which to base its decision in this proceeding.").

[10] Michael O'Rielly, "Debunking the Sinclair Agenda Myth," FCC Blog (May 18, 2018), *available at* *https://www.fcc.gov/news-events/blog/2018/05/18/debunking-sinclair-agenda-myth*.

[11] *United States v. Nexstar Broad. Grp., Inc.* Final Judgment, Case 1:16-cv-01772-JDB, at 16 (D.D.C., Nov. 16, 2016), *available at* https://www.justice.gov/atr/case-document/file/925071/download ("Defendants may not (1) reacquire any part of the Divestiture Assets, (2) acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person, (3) enter into any local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement, or conduct other business negotiations jointly with the Acquirers with respect to the Divestiture Assets, or (4) provide financing or guarantees of financing with respect to the Divestiture Assets, during the term of this Final Judgment. The shared services prohibition does not preclude Defendants from continuing or entering into agreements in a form customarily used in the industry to (1) share news helicopters or (2) pool generic video footage that does not include recording a reporter or other on-air talent, and does not preclude Defendants from entering into any non-sales-related shared services agreement or transition services agreement that is approved in advance by the United States in its sole discretion.").

[12] *See id.*

Sinclair, moreover, takes the position that *retransmission consent itself* is "not relevant to the public interest determination the Commission must make."[13] So it is at least possible that these—or other withheld documents—relate to retransmission consent, but Sinclair has unilaterally determined them to be "not germane." This simply cannot be right, but the Commission has no way to know so long as Sinclair withholds the documents in question.

In the end, the Commission must determine that Sinclair's divestitures are genuine before it can approve this transaction. This is particularly important here because Sinclair has claimed its place as the poster child for abusing such arrangements.[14] The Commission cannot reasonably make such a determination unless Sinclair provides it with *all* information related to its divestiture applications. Because Sinclair appears unable or unwilling to do so on its own, the Commission should require such disclosure, subject to the existing protective order as necessary.

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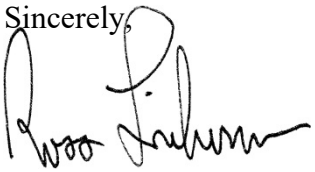
In accordance with the Commission's rules, I will file a copy of this letter electronically in the docket listed above.

Sincerely,



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[13] Applicants' Consolidated Opposition to Petitions to Deny, MB Docket No. 17-179 at 27 (filed Aug. 23, 2017).

[14] *See Sinclair Broad. Grp., Inc.*, 31 FCC Rcd. 8576, ¶ 4 (2016) ("In the course of the Investigation, the Bureau found that Sinclair represented numerous Non-Sinclair Stations in retransmission consent negotiations with MVPDs between April 2, 2015 (the effective date of the Commission's rule implementing the statutory prohibition on joint negotiation) and November 30, 2015. More specifically, during this time period, Sinclair negotiated retransmission consent on behalf of, or coordinated negotiations with, a total of 36 Non-Sinclair Stations with which it had JSAs, LMAs, or SSAs, concurrently with its negotiation for retransmission consent of at least one Sinclair Station in the same local market. These negotiations involved a total of six different MVPDs, and in some instances Sinclair represented the same Non-Sinclair Station in retransmission consent negotiations with multiple MVPDs.").